

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
710 E STREET • SUITE 200
EUREKA, CA 95501-1865
VOICE (707) 445-7833
FACSIMILE (707) 445-7877

MAILING ADDRESS:
P. O. BOX 4908
EUREKA, CA 95502-4908



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Filed: April 13, 2006
49th Day: June 1, 2006
Staff: Tiffany S. Tauber
Staff Report: April 27, 2006
Hearing Date: May 12, 2006

STAFF REPORT: APPEAL

NO SUBSTANTIAL ISSUE

APPEAL NO.: **A-1-MEN-06-023**

APPLICANTS: **MacCallum House, L.L.C.**

LOCAL GOVERNMENT: County of Mendocino

DECISION: Approval with Standard Conditions

PROJECT LOCATION: In the Town of Mendocino, on the north side of Albion Street and the south side of Ukiah Street at 45020 Albion Street, Mendocino County (APNs 119-236-10, 119-236-12).

PROJECT DESCRIPTION: Convert an existing 340-square-foot storage shed containing a walk-in refrigerator into an auxiliary kitchen by adding a commercial gas stove and vent hood, double sink, hand washing sink, water heater, floor drain, ventilation system, and 3'x4' water heater enclosure.

APPELLANT: Mary Cesario Weaver

SUBSTANTIVE FILE DOCUMENTS: 1) Mendocino County CDP No. 64-2005; and 2) Mendocino County Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission determine that NO SUBSTANTIAL ISSUE exists with respect to the grounds on which the appeal has been filed because the appellant has not raised valid grounds for appeal.

The development, as approved by the County, consists of the conversion of an existing storage shed into an auxiliary kitchen for use in conjunction with the operation of the MacCallum House Inn and Restaurant. The project site is located in the Town of Mendocino, on the north side of Albion Street and the south side of Ukiah Street, at 45020 Albion Street in Mendocino County.

The appellant's main contention is that the kitchen approved by the County is intended to be used by the applicants for a series of outdoor wedding receptions and other events held on the lawn of the MacCallum House property. The appellant alleges that these events do not meet the definition of "temporary event" or "limited duration" as defined by the temporary events provisions of the Mendocino Town Zoning Code and therefore are subject to coastal development permit requirements. Staff shares the concerns of the appellant that on-going use of the grounds of the MacCallum House may be development that is not exempt from coastal development permit requirements. As discussed in Staff Note No. 2 below, staff has previously written the County about these concerns and intends to continue to review the coastal development permit requirements for these kinds of activities with the County. However, the use of the property for weddings and other gatherings is not part of the project description of the application and not part of the development approved by the County.

Staff recommends that the Commission find that the appellant's contentions are invalid grounds for an appeal because the contentions raised are limited to the use of the lawn to place tents and hold outdoor gatherings, which is not a part of the County's approval of the CDP application being appealed (CDP# 64-2005). The conversion of a storage shed to a kitchen is the only development requested and authorized by the County's action on CDP# 64-2005. The appellant does not raise any contentions with regard to the kitchen itself and its conformance with the certified LCP.

Therefore, staff recommends that the Commission find that the appeal raises no substantial issue because the appellant's contentions are invalid grounds for an appeal under Section 30603 of the Coastal Act regarding consistency of the project as approved with the certified LCP.

The motion to adopt the staff recommendation of No Substantial Issue is found on page 13.

STAFF NOTES:

1. Background

The development that is the subject of this appeal (Appeal No. A-1-MEN-06-023) involves the County's approval of a CDP (CDP# 64-2005) for the conversion of a storage shed for use as an auxiliary kitchen. This same kitchen was the subject of a previous appeal, by the same appellant, of the County's approval of CDP# 02-04 (Appeal No. A-1-MEN-05-032). That previous appeal also involved the County's action under the previous CDP application to exempt from coastal permit requirements the applicants' request for the placement and use of 40'x 60' tents for weddings and other outdoor events. In that previous application, the County determined that the placement and use of 40' x 60' tents for weddings and other outdoor events was exempt from coastal development permit requirements, taking the position that these events were temporary events of limited duration and thus, exempt from coastal development permit requirements under the Town code's temporary event provisions.

The public hearing on the substantial issue portion for this previous appeal was opened at the August 12, 2005 Commission meeting and continued to the September 15, 2005 Commission meeting. In its staff recommendation dated September 1, 2005, staff recommended that the Commission find that the conversion of the shed for use as a kitchen did not raise a substantial issue, but that the County's action to exempt the outdoor events as "temporary events" did raise a substantial issue regarding consistency with the certified LCP and recommended that the Commission hold a de novo hearing on the application.

On September 9, 2005, prior to the September 15th Commission hearing on the appeal of the conversion of the kitchen and the County's action to exempt the use of tents for outdoor events, the applicants withdrew their application from the County, and the County rescinded both its action on the coastal development permit and the Notice of Final Action that had been submitted to the Commission on the application (CDP# 02-04). Therefore, the Commission never acted on the appeal.

The applicants subsequently submitted a new application to the County (CDP# 64-2005) for the conversion of the storage building to an accessory kitchen with no request for the use of tents. The County approved CDP# 64-2005 on March 23, 2006 and that approval is the subject of this current appeal.

2. Coastal Development Permit Required for Outdoor Events

Although the use of tents for outdoor events on the lawn of the MacCallum House is not part of the County's action before the Commission on appeal, staff notes that the County's staff report contains statements suggesting that the kitchen could be used to serve these outdoor events. Specifically, the staff report states, "*The property is the site of the MacCallum House, a hotel, restaurant and bar, which has an established history of*

hosting weddings and other outdoor gatherings. Weddings and similar events are a permitted accessory use as provided by Chapter 20.704 of the Mendocino Town Code. The auxiliary kitchen will facilitate the provision of food service in conjunction with such gatherings....” The use of the grounds for weddings and other outdoor gatherings constitutes a change in the intensity or density of use of the property as defined under Section 30106 of the Coastal Act and Section 20.608.023 of the Mendocino Town Zoning Code. As discussed in the Background section above, the County rescinded its action on the original application and its previously submitted Notice of Final Action that included the action to exempt the outdoor events and has taken no further formal action to authorize this form of development.

Commission staff has previously written the County about staff’s belief that a coastal development permit is required for this form of development. Section 20.708 of the Mendocino Town Zoning Code sets forth regulations for temporary events. Specifically, Section 20.708.020 provides as follows:

Sec. 20.708.020 Entertainment Events, Religious Assembly, Other Large Public Gatherings or Other Temporary Events.

(A) Purpose and Authority. The purpose of this section is to identify the standards the Department of Planning and Building Services, under the direction of the Director, will use in determining whether a temporary event is excluded from coastal development permit requirements.

(B) Procedure. The organizer of a temporary event is required to contact the Department of Planning and Building Services to allow the Director or his/her designee to review the project and determine if a coastal development permit is necessary, pursuant to the following regulations.

(C) Criteria for Requiring a Coastal Development Permit. Except as described below, temporary events are excluded from coastal development permit requirements.

The Director may determine that a temporary event is subject to coastal development permit review if the Director determines that unique or changing circumstances exist relative to a particular temporary event that have the potential for significant adverse impacts on coastal resources. Such circumstances may include the following:

(1) The event, either individually or together with other temporary events scheduled before or after the particular event, precludes the general public from use of a public recreational area for a significant period of time;

(2) The event and its associated activities or access requirements will either directly or indirectly impact environmentally sensitive habitat areas, rare or endangered species, significant scenic resources, or other coastal resources as defined in Subsection (D) below;

(3) The event would restrict public use of parking areas to the extent that it would significantly impact public recreation areas or public access to coastal waters;

(4) The event has historically required a coastal development permit to address and monitor associated impacts to coastal resources.

(D) Definitions. For purposes of this section, the following definitions shall apply.

(1) "Temporary event(s)" means an activity or use that constitutes development as defined in [Section 20.608.023](#) of the Mendocino Town Zoning Code; and is an activity or function of limited duration; and involves the placement of non-permanent structures; and/or involves exclusive use of a sandy beach, parkland, filled tidelands, water, street, or parking area which is otherwise open and available for general public use;

(2) "Limited duration" means a period of time which does not exceed a two-week period on a continual basis, or does not exceed a consecutive four-month period on an intermittent basis;

(3) "Non-permanent structures" include, but are not limited to, bleachers, perimeter fencing, vendor tents/canopies, judging stands, trailers, portable toilets, sound/video equipment, stages, platforms, etc., which do not involve grading or landform alteration for installation;

(4) "Exclusive use" means a use that precludes use in the area of the event for public recreation, beach access, or access to coastal waters other than for or through the event itself;

(5) "Coastal resources" include, but are not limited to, public access opportunities, visitor and recreational facilities, water-oriented activities, marine resources,

biological resources, environmentally sensitive habitat areas, agricultural lands, and archaeological or paleontological resources;

(6) "Sandy beach area" includes publicly owned and privately owned sandy areas fronting on coastal waters, regardless of the existence of potential prescriptive rights or a public trust interest...[emphasis added.]

As noted in the provisions above, temporary events are defined in the Town Code as being of "limited duration." "Limited duration" is defined as a period of time that does not exceed a two-week period on a continual basis, or does not exceed a consecutive four-month period on an intermittent basis.

The applicants previously provided information on the types and numbers of events that are held on the MacCallum House lawn, in an August 23, 2005 letter to the Commission. The MacCallum House holds private wedding events for its guests and community events for various entities in Mendocino, including fundraisers, Easter egg hunts, and music festivals. Such events were held 6 times in 2003, 15 times in 2004, and were anticipated to be held 18 times in 2005. The Mendocino Historical Review Board (MHRB) recently approved the placement of a 60'x 40' tent on the main lawn of the MacCallum House grounds to hold events for a total of 36 days in the months of April, May, June, September, October, and November of 2006. Furthermore, a draft market study prepared for the City of Fort Bragg estimates that 25% of the MacCallum House business comes from holding wedding receptions on their grounds (*Draft Report, Mill Site Market Study Update/Land Use Program*, prepared by Economic & Planning Systems, Inc., December 2005). A copy of the public notice for the MHRB hearing on the placement of the tents in 2006 and a copy of excerpts from the market study were attached to the appellants appeal (See Exhibit No. 3). Thus, the Commission notes that the previous pattern of wedding and other events and the proposed schedule of future events do not reflect a random series of unanticipated temporary events. Instead, the weddings and outdoor events occur on a regular basis and provide a significant amount of business to the MacCallum House Inn that is both anticipated and planned for in a manner that exceeds the definition of "limited duration."

The intensification of use of a property to hold weddings and outdoor gatherings on an on-going basis could potentially have adverse effects on coastal resources, such as public access by usurping parking needed by users of public access areas, or visual resources by blocking coastal views with tents or other temporary facilities. Such impacts may or may not be occurring at the MacCallum House site. However, staff believes a coastal development permit is required for the reasons discussed above, and review of a coastal development permit application would afford the County the opportunity to evaluate the project's consistency with the County's LCP. Commission staff will continue to review the coastal development permit requirements for this form of development with the

County to ensure that such events proposed throughout the County are properly evaluated and permitted.

3. Standing of Appellant

Section 30625 of the Coastal Act provides, in applicable part, that any appealable action on a coastal development permit for any development by a local government may be appealed to the Commission by any aggrieved person. Section 30801 of the Coastal Act defines an "aggrieved person" as *"any person who, in person or through a representative, appeared at a public hearing of the commission, local government, or port governing body in connection with the decision or action appealed, or who, by other appropriate means prior to a hearing, informed the commission, local government, or port governing body of the nature of his concerns or who for good cause was unable to do either"* (emphasis added).

Staff notes that the appellant did not testify at the local hearing on the development being appealed. However, the appellant indicates that she did not receive notice of the public hearing from the County despite the County's awareness of her interest in the development. The appellant had testified and expressed her concerns about the kitchen and outdoor gatherings at the MacCallum House property at the local hearings on the application previously approved by the County (Mendocino Co. CDP No. 02-04) in 2005, and had also appealed that previous County action to the Commission. The grounds for her original appeal included grounds related to the consistency of the kitchen itself with the certified LCP, as well as the County's decision to exempt the outdoor gatherings from the need for coastal development permits. The appellant has provided staff with a copy of an email correspondence between herself and County staff wherein she questions why she was not notified of the hearing and County staff concedes that she should have been sent notice based on her past expressed interest in the development (Exhibit No. 5).

Therefore, as the appellant did not receive notice of the hearing on the development despite the County's awareness of her interest in the project, the appellant, for good cause, was unable to appear at the public hearing, or inform the local government of the nature of her concerns.

Therefore, the appellant has standing as an aggrieved person to appeal the local government's approval of CDP #64-2005 pursuant to Coastal Act Sections 30801 and 30625.

4. Notice of Appeal by Appellant

Section 13111(c) of the Commission's administrative regulations requires project appellants to notify the applicant, any persons known to be interested in the application, and the local government of the filing of an appeal. The regulations further provide that *"unwarranted failure to perform such notification may be grounds for dismissal of the appeal by the Commission."* In this case, the appellant failed to send notice of filing an

appeal to the applicant and the local government as required by Section 13111(c). However, on April 24, 2006, the applicants' representative contacted Commission staff regarding the appeal and indicated that the applicants' had received the Commission notice of appeal on that day. The notice sent to the applicants included a copy of the appeal. Although the applicants did not receive notice of the appeal directly from the appellant, the applicants otherwise received notice on the first business day following the last day of the appeal period, at least 18 days prior to the hearing and four days prior to the mailing of the staff recommendation and thus, were notified of the pending appeal in ample time to review the staff recommendation and provide comments prior to the hearing. Therefore, in this case, staff does not recommend that the Commission dismiss the appeal pursuant to Section 13111(c) based on the appellant's failure to notify the applicants of the filing of an appeal.

5. Appeal Process

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603).

Section 30603 of the Coastal Act states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within three hundred feet of the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, or within one hundred feet of any wetland or stream, or within three hundred feet of the top of the seaward face of any coastal bluff, or those located in a sensitive coastal resource area. Additionally, Section 30603(a)(4) makes the approval of "any development" by a coastal county appealable to the Commission, with the only exception being development that is "designated as the principal permitted use" under the zoning in the LCP.

On March 23, 2006, the Mendocino County Coastal Permit Administrator approved the coastal development permit application for the conversion of an existing storage shed into an auxiliary kitchen. The permit was approved with no special conditions (CDP# 64-2005, See Exhibit No. 4).

The approved development is appealable to the Commission for two independent reasons: (1) because, pursuant to Section 30603(a)(4) of the Coastal Act, it is not specifically identified as the principal permitted use in the county's zoning code and (2) because the approved development is located in the Town of Mendocino, a special community as designated in the certified LCP and therefore an appealable sensitive coastal resource area pursuant to Section 30603(a)(3) of the Coastal Act.

Regarding the approved development's appealability pursuant to Section 30603(a)(4), Mendocino Town Zoning Section 20.608.035(I) provides a definition of "Principal Permitted Use" as follows:

"Principal Permitted Use(s)" means the primary use as designated in the Mendocino Town Plan and this Division for each land use classification. Use Types allowed within each principal permitted use category are specified in Chapters 20.644 through 20.684.

The Mendocino Town Plan describes the principally permitted uses for the "Commercial" land-use classification, where the subject property is designated:

Principal Permitted Uses:

Residential: Single family, two family and multifamily dwelling units, subject to density requirements.

Civic Uses: Clinic services, libraries, cultural facilities, lodge, fraternal and civic assembly, religious assembly, minor impact services and utilities.

Commercial Uses: Administrative and business offices, specialty shops, personal services, retail stores (all of which are under 1,000 square feet of floor area per parcel).

The Mendocino Town Zoning Code Section 20.664.010 lists the principally permitted uses for the "Mendocino Commercial" district, where the subject property is designated:

A) The following use types are permitted in the MC District:

(1) Residential Use Types

Family Residential: Single Family

Family Residential: Two Family

Family Residential: Multi-Family

(2) Civic Use Types

Administrative Services Government

Clinic Services

Cultural Exhibits and Library Services

Lodge, Fraternal and Civic Assembly

*Minor Impact Utilities
Religious Assembly*

(B) The following Use Types which do not exceed one thousand (1,000) square feet of gross floor area per parcel are permitted in the MC District.

(1) Commercial Use Types

*Administrative and Business Offices
Medical Services
Personal Services
Retail Sales: Limited*

(C) For the purposes of appeal to the Coastal Commission, the Principal Permitted Use for the Commercial District shall be Commercial Use Types. (Ord. No. 3915 (part), adopted 1995) [emphasis added.]

The Mendocino Town Zoning Code lists the principally permitted uses for the *Visitor Serving Facilities Combining District:

*The following use types are permitted in the * District:*

(A) Residential Use Types

Family Residential: Single Family (Ord. No. 3915 (part), adopted 1995)

The property affected by the approved conversion of the storage shed to a kitchen at the MacCallum House Inn is designated Commercial under the LUP and zoned Mendocino Commercial *Visitor Serving Facilities Combining District (MC*) under the Town Coastal Zoning Code. The County's LUP and zoning ordinance designates commercial use types as the principally permitted use for the Mendocino Commercial Zoning District, and specifically states that for purposes of appeal to the Coastal Commission, the Principally Permitted Use for the Commercial District shall be Commercial Use Types. The certified zoning code defines commercial use types to solely include administrative and business offices, medical services, personal services and retail sales. Commercial use types do not include inns, restaurants or food sales for consumptive or non-consumptive use. In fact, dining establishments in this zone are solely allowed as a conditional use, subject to a conditional use permit. Therefore, use of the property as an inn, restaurant, dining establishment, or food sales for consumption or non-consumption is not the principal permitted use under the applicable Mendocino Town Plan or Zoning District (C, MC, and *). Because the approved coastal development permit application for conversion of a storage shed to a kitchen is not the principal permitted use in an MC* zone, such approved development is appealable to the Coastal Commission. Therefore,

the County's approval of the coastal development permit application for the conversion of a storage shed to a kitchen is appealable to the Commission pursuant to Sections 30603(a)(4) and 30625 of the Coastal Act.

The approved development is also appealable to the Commission pursuant to 30603 (a)(3) of the Coastal Act because the proposed development is within a sensitive coastal resource area. Section 20.608.038(6) of the Mendocino Town Zoning Code and Section 30116 of the Coastal Act define sensitive coastal resource areas as "those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity," including, among other categories, "special communities." Policy 4.13-1 of the Mendocino Town Plan designates the entire town of Mendocino as a special community. Therefore, the development is located within a sensitive coastal resource area as defined in the LCP, and under Section 30116 of the Coastal Act.

Sensitive coastal resource areas (SCRAs) can be designated either by the Commission pursuant to Section 30502 of the Coastal Act, or by local government by including such a designation in its Local Coastal Program (LCP). The Commission did not ultimately designate SCRAs or make recommendations to the Legislature, as contemplated by Section 30502 and 30502.5. However, Section 30502 does not place exclusive power in the Commission to designate SCRAs. Section 30502 established a process whereby the Commission could require local governments to take implementing actions for the protection of SCRAs in addition to the enactment of zoning ordinances. Because it did not designate SCRAs, the Commission does not have the authority to require local governments to adopt such additional implementing actions. Nothing in Sections 30502 or 30502.5, however, overrides other provisions in the Coastal Act that assign primary responsibility to local governments for determining the contents of LCPs and that authorize local governments to take actions that are more protective of coastal resources than required by the Coastal Act. In 1977, the Attorney General's Office advised the Commission that if the Commission decided not to designate SCRAs, local government approvals of development located in SCRAs delineated in LCPs would nonetheless be appealable to the Commission.

The ability of local governments to designate SCRAs in LCPs is further supported by the legislative history of changes to Section 30603. In 1982, after the 1978 deadline for the Commission to designate SCRAs, the Legislature amended the provisions of Section 30603 that relate to appeals of development located in SCRAs. (Cal. Stats. 1982, c. 43, sec. 19 (AB 321 - Hannigan).) The Legislature's 1982 revisions to the SCRA appeal process demonstrate that the Commission's decision not to designate SCRAs did not have the effect of preventing local governments from designating SCRAs through the LCP process. If the Commission's decision not to designate SCRAs rendered the Coastal Act provisions that relate to SCRAs moot, the Legislature's action in 1982 would have been a futile and meaningless exercise. Instead, by deliberately refining the SCRA appeal process, the Legislature confirmed that local governments continue to have the authority to designate SCRAs.

Although a city or county is not required to designate SCRAs in their LCP, at least four local governments have chosen to do so. The Commission has certified LCP's that contain SCRA designations from the City of Grover Beach (1982), San Luis Obispo County (1987), the City of Dana Point (1989) and the segment of Mendocino County's LCP that covers areas outside of the Town of Mendocino (1992).

Designation of SCRAs in this manner is consistent with the reservation of local authority, under Section 30005, to enact certain regulations more protective of coastal resources than what is required by the Act. As noted above, the Coastal Act does not require local governments to designate SCRAs, but local governments are allowed to designate such areas.

Division III of Title 20, Section 20.608.038(6) of the Mendocino Town Zoning Code (MTZC), which is specific to the Town of Mendocino, defines "Sensitive Coastal Resource Areas" to "mean those identifiable and geographically bounded land and water areas with the coastal zone of vital interest and sensitivity." Subpart 6(e) of this section includes "special communities or neighborhoods which are significant visitor designation areas." This definition closely parallels the definition of SCRA contained in Section 30116 of the Coastal Act. Mendocino Town Plan Policy 4.13-1 designates the entire Town of Mendocino a "special community" and a "significant coastal resource." The text of the Town Plan notes the historic nature of the Town, its collection of structures that date back to the 19th century, and its scenic setting which all contribute to the unique character of the Town. The text states, " 'this mystical village' is the most photographed and most visited coastal destination north of San Francisco and as such is more threatened by over use than any other coastal community." Section 20.504.020(A) of the Mendocino Town Zoning Code notes, "the Town of Mendocino is the only recognized special community in the Coastal Element." Thus, the Town Plan indicates the region-wide significance of the Town as a coastal resource. The boundaries of the Town of Mendocino are "all of the unincorporated areas of the Town of Mendocino as delineated on Map 32 of the Coastal Element of the General Plan." Thus, the location and size of this sensitive coastal resource area is mapped.

Therefore, the development is located within a sensitive coastal resource area and, as such, is also appealable to the Commission pursuant to Sections 30603(a)(3) and 30625 of the Coastal Act.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. In this case, because the staff is recommending no substantial issue, the Commission will hear arguments and vote on the substantial issue question.

Proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission on the substantial issue question are the applicants, persons who opposed the application before the local government (or their representatives), and the local government.

Testimony from other persons regarding substantial issue must be submitted in writing, copies of which will be provided to all Commissioners.

Unless it is determined that there is no substantial issue, the Commission would continue with a full public hearing on the merits of the project, which may occur at a subsequent meeting. If the Commission were to conduct a *de novo* hearing on the appeal, the applicable test for the Commission to consider would be whether the development is in conformity with the certified Local Coastal Program.

6. Filing of Appeal

One appeal was filed by Mary Cesario Weaver (Exhibit No. 3). The appeal was filed with the Commission in a timely manner on April 13, 2006 within 10 working days of receipt by the Commission of the County's Notice of Final Action (Exhibit No. 4) on April 7, 2006. The Commission sent notice of the appeal to the applicants and the County of Mendocino in a timely manner on April 17, 2006.

I. MOTION, STAFF RECOMMENDATION AND RESOLUTION

Pursuant to Section 30603(b) of the Coastal Act and as discussed below, the staff recommends that the Commission determine that no substantial issue exists with respect to the grounds on which the appeal has been filed. The proper motion is:

MOTION:

I move that the Commission determine that Appeal No. A-1-MEN-06-023 raises **No Substantial Issue** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

Staff Recommendation of No Substantial Issue :

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application *de novo* and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

Resolution to Find Substantial Issue:

The Commission hereby finds that Appeal No. A-1-MEN-06-023 presents no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. APPELLANT'S CONTENTIONS

The Commission received one appeal of the County of Mendocino's decision to approve the coastal development permit application from Mary Cesario Weaver. The project as approved by the County involves the conversion of an existing storage shed to an auxiliary kitchen for use in conjunction with the operation of the MacCallum House Inn and Restaurant.

The approved project is located near the center of the Town of Mendocino, on the north side of Albion Street and the south side of Ukiah Street, at 45020 Albion Street in Mendocino County. The subject property is surrounded by other commercial and residential development and many historic structures.

The appeal raises one contention alleging inconsistency of the approved project with the County's certified LCP. The appellant's contention is summarized below, and the full text of the contention is included as Exhibit No. 3.

1. Use of Approved Kitchen to Serve Outdoor Events

The appellant contends that the auxiliary kitchen approved by the County is intended to be used to serve a series of outdoor wedding receptions and other events conducted on the lawn of the MacCallum House even though the applicants have excluded mention or request for authorization of the outdoor events from the application. The appellant references a letter written by Commission staff to the County Planning staff as stating the reasons for her appeal. The referenced letter, dated October 31, 2005, states Commission staff's beliefs that the outdoor events at the MacCallum House should be subject to coastal permitting requirements. The appellant also submitted evidence that demonstrates the applicants' intention to use the kitchen for outdoor wedding receptions and other events, including a copy of the Mendocino Historical Review Board agenda where the applicants have requested approval of the use of a 40'x60' tent on the main lawn of the MacCallum House grounds on specific dates between April 8 and November 5, 2006 (for a total of 36 days). The appellant states that the use of the site for outdoor events is a misrepresentation of the definition of "temporary use" and "limited duration" and is inconsistent with the provisions of the Town Code that exempt temporary events meeting certain definitions and criteria from coastal development permit requirements. In summary of her contention, the appellant states, "*This kitchen is clearly proposed to serve the outdoor events.*"

B. LOCAL GOVERNMENT ACTION

On March 23, 2006, the Mendocino County Coastal Permit Administrator approved the coastal development permit application for the conversion of an existing storage shed into an auxiliary kitchen with no special conditions (CDP #64-2005) (Exhibit No. 4).

There were no special conditions imposed on this permit. The County approved the kitchen as an accessory use to the existing hotel and restaurant. Although neither an inn/hotel nor a dining establishment is a principally permitted use in the Mendocino Commercial (MC) zone where MacCallum House is located, the hotel and restaurant were determined by the County to be legally non-conforming uses, as they pre-dated the Coastal Act and the town's zoning regulations. Therefore the kitchen was determined to be accessory to this legally-non-conforming dining establishment use and approvable under a standard coastal development permit. Permanent accessory structures such as the auxiliary kitchen are subject to approval of a coastal development permit, as per the Town code's accessory use regulations. This permit is partially "after the fact," because in November of 2004, the County determined that the kitchen had been partially installed and was in use. In 2003, the applicants obtained a building permit and a Mendocino Historic Review Board (MHRB) permit to enclose an existing 184-square-foot wood storage shed and combine it with an adjacent 153-square-foot storage building to create a 337-square-foot storage building. In 2004, the applicants obtained another building permit to extend electrical service to the building, and MHRB permits were obtained for exhaust fans and other exterior alterations to the building. Toward the end of 2004 it was determined that the kitchen was in use.

Also in 2004, the applicants applied for a coastal development permit to allow the use of the storage building to be changed to an auxiliary catering kitchen and to allow the placement and use of 40' x 60' tents for weddings and other outdoor events. The County approved this application as CDP# 02-04. The County's approval of that previous coastal development permit in 2005 was appealed to the Commission. The public hearing on the substantial issue portion for this previous appeal was opened at the August 12, 2005 Commission meeting and continued to the September 15, 2005 Commission meeting. In its staff recommendation dated September 1, 2005, staff recommended the Commission find that the conversion of the shed for use as a kitchen did not raise a substantial issue, but that the County's action to exempt the outdoor events as "temporary events" did raise a substantial issue regarding consistency with the certified LCP and recommended that the Commission hold a de novo hearing on the application.

On September 9, 2005, prior to the September 15th Commission hearing on the appeal of the conversion of the kitchen and the County's action to exempt the use of tents for outdoor events, the applicants withdrew their application from the County, and the County rescinded both its action on the coastal development permit and the Notice of Final Action that had been submitted to the Commission on the application (CDP# 02-04). Therefore, the Commission never acted on the appeal.

The applicants subsequently submitted a new application to the County (CDP# 64-2005) for the conversion of the storage building to an accessory kitchen with no request for the use of tents. The County approved CDP# 64-2005 on March 23, 2006 and that approval is the subject of this appeal.

The decision of the Coastal Permit Administrator to approve the development proposed in the subject coastal development permit application was not appealed at the local level to the County Board of Supervisors. The County then issued a Notice of Final Action, which was received by the Commission staff on April 7, 2006 (Exhibit No. 4). Section 13573 of the Commission's regulations allows for appeals of local approvals to be made directly to the Commission without first having exhausted all local appeals when, as here, the local jurisdiction charges an appeal fee for the filing and processing of local appeals.

The County's approval of the project was appealed to the Coastal Commission in a timely manner on April 13, 2006, within 10 working days after receipt by the Commission of the Notice of Final Local Action on April 7, 2006.

C. PROJECT AND SITE DESCRIPTION

The approved development is located in the coastal zone in the Town of Mendocino on the north side of Albion Street and the south side of Ukiah Street, at 45020 Albion Street in Mendocino County (APNs 119-236-10, 119-236-12). The site is currently developed with the MacCallum House Inn, a 2,600 square foot historic house, and several smaller surrounding structures, including a gazebo, cottages, carriage house, green house, loft, and water tower. The front of the inn facing Albion Street contains a large lawn and landscaped area. The kitchen as approved would be located in back of the inn near Ukiah Street (to the north), and would contain a walk-in refrigeration unit, three sinks, a hot water heater with an exterior redwood enclosure, air intake fan, commercial gas stoves with fan hood, and a ceiling fan with copper-lined exterior redwood shroud.

The Town of Mendocino is recognized as a unique community on the northern California coast, and is listed on the National Register of Historic Places. The town is designated as a "Special Community" in the County's LCP. The MacCallum House Inn and Restaurant is a historic building located in the core historic district of downtown Mendocino, which contains structures dating back to the late 1800s. The subject property is surrounded by other commercial and residential development and many historic structures.

D. SUBSTANTIAL ISSUE ANALYSIS.

Section 30603(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program...

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

The term “substantial issue” is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it “finds that the appeal raises no significant question.” (California Code of Regulations, Title 14, Section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

In this case, for the reasons discussed further below, the Commission determines that the appellant's contentions raise invalid grounds for appeal with respect to the County's action under appeal. The appellant's contentions do not allege inconsistencies of the approved development with the policies and standards of the certified LCP and thus, are not valid grounds for appeal pursuant to Section 30603(b)(1) of the Coastal Act.

1. Appellant's Contentions Are Not Valid Grounds for Appeal

The appellant has not raised any allegations regarding inconsistencies of the approved kitchen with the policies and standards of the certified LCP. Rather, the appellant raises concerns that the kitchen would be used to serve wedding receptions and other outdoor events that are conducted at the MacCallum House, which the appellant contends do not meet the definitions of “temporary event” and “limited duration” under the County's

temporary event provisions. The appellant's contentions are limited to issues surrounding the use of tents for outdoor events on the MacCallum House property. The only development requested by the applicants and approved by the County under CDP # 64-2005 is the conversion of a storage shed for use as an auxiliary kitchen. Thus, the use of the grounds of the MacCallum House for wedding receptions and other outdoor events is neither included in the application or the coastal development permit which the County approved for the subject kitchen. Therefore, the use of the site for these events is not part of the approved development and the County did not otherwise take an action on a coastal development permit application for use of the site for wedding receptions and other outdoor events. Thus, the question of whether the use of the site for these events is consistent with the LCP is not before the Commission on appeal.

The appellant's contentions are not valid grounds for an appeal as established by Section 30603(b)(1) of the Coastal Act as the contentions do not allege an inconsistency of the approved development with the certified LCP. That is, rather than challenging the development as approved, the appellant challenges the consistency with the certified LCP of development that is not a part of the County's approval of Coastal Development Permit No. 64-2005. Therefore, the Commission concludes that the contentions are not valid grounds for appeal and that the appeal does not raise a substantial issue of conformity of the approved development with the certified LCP.

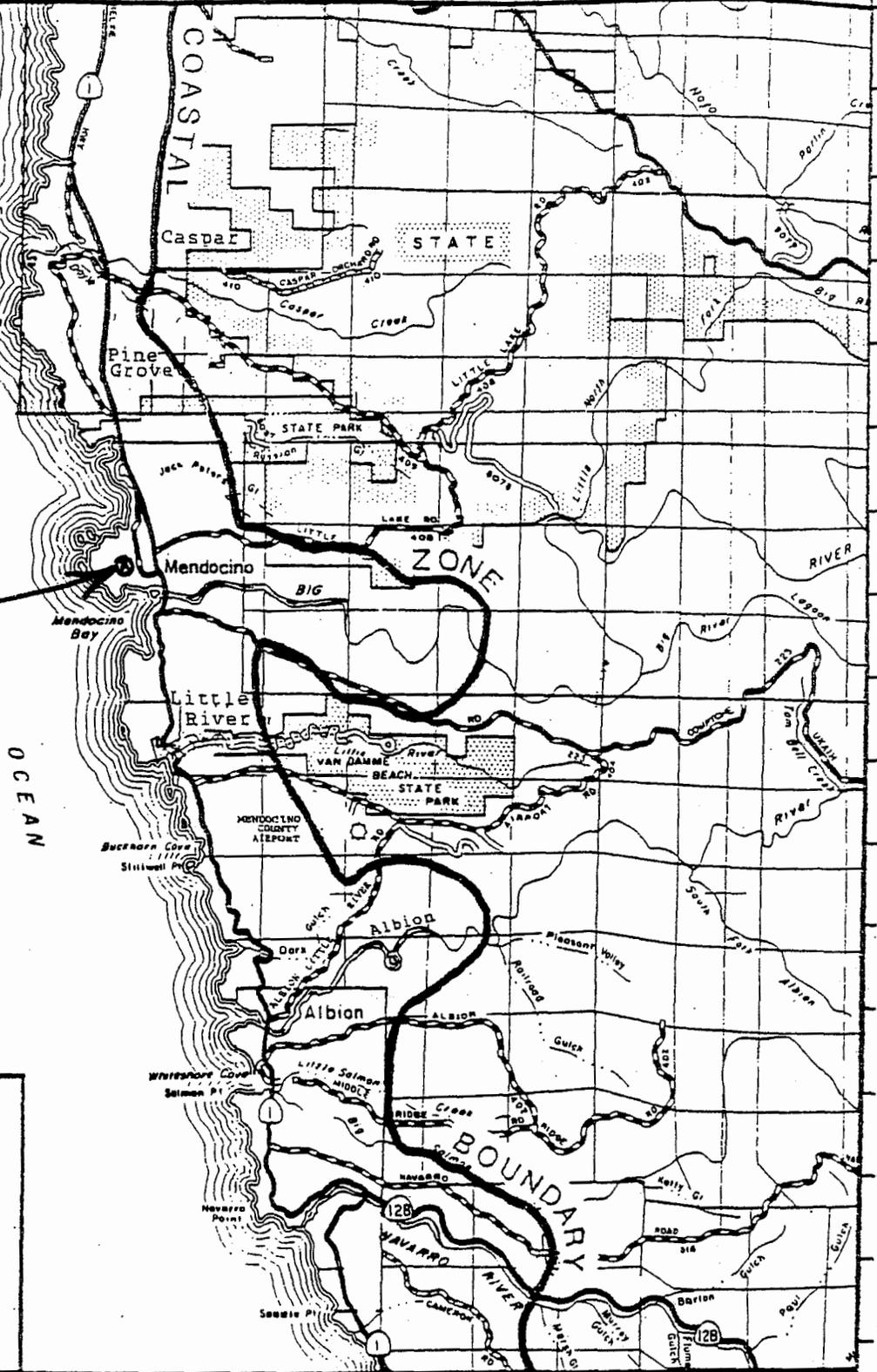
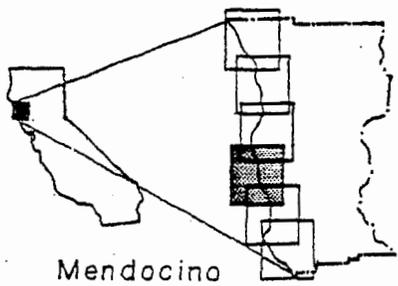
EXHIBITS:

1. Regional Location Map
2. Vicinity Map
3. Appeal
4. Notice of Final Local Action
5. Correspondence between Appellant and County

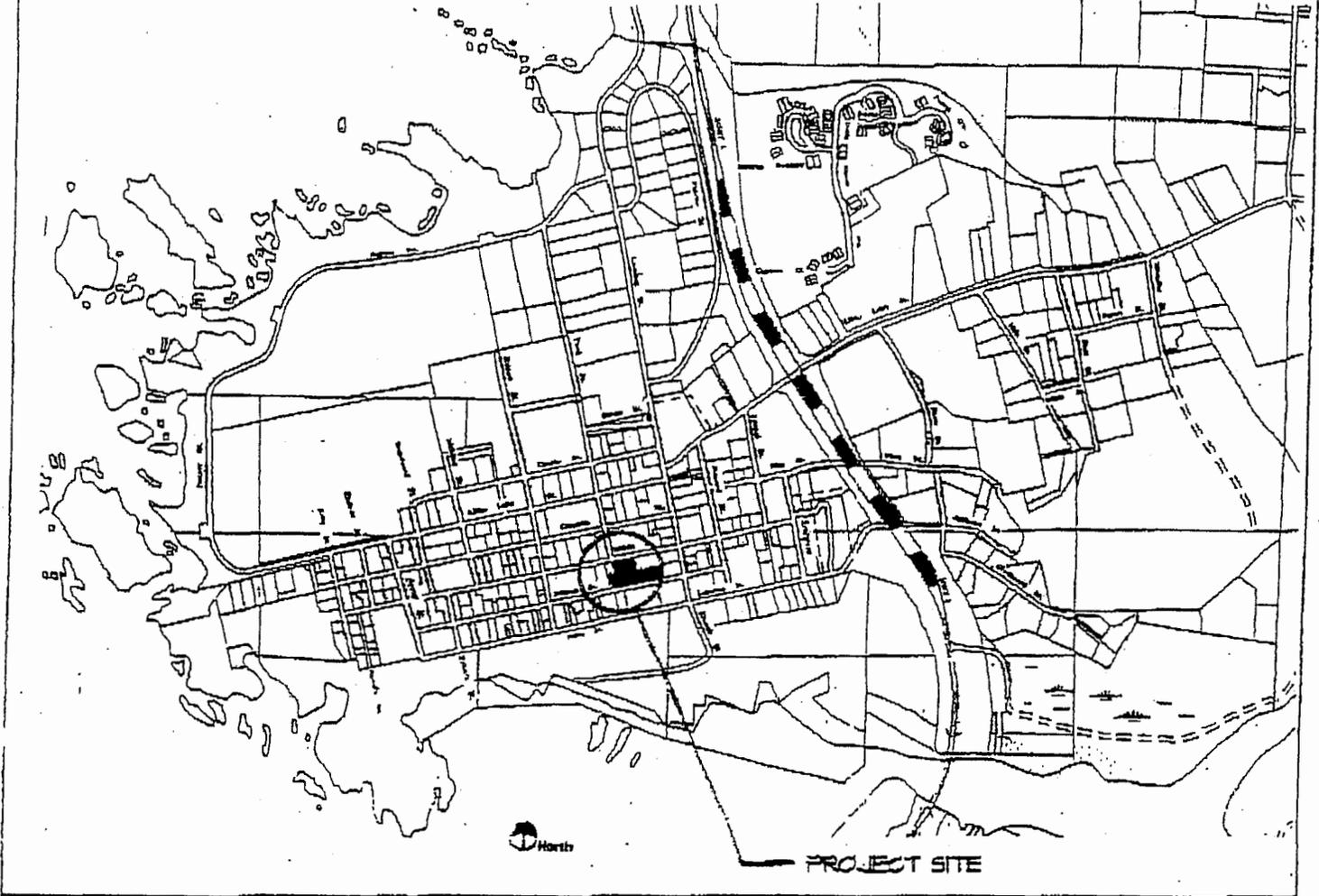
A B C D E F G H I J K L M N O

PROJECT SITE

EXHIBIT NO. 1
 APPLICATION NO.
 A-1-MEN-06-023
 MacCALLUM HOUSE
 REGIONAL LOCATION



Town of Mendocino



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LI

LOCATION MAP



EXHIBIT NO. 2
APPLICATION NO.
A-1-MEN-06-023
MacCALLUM HOUSE
VICINITY MAP

c

MacCALLUM HOUSE LLC

LOCATION MAP

SCALE: NONE



CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
710 E STREET, SUITE 200
EUREKA, CA 95501
VOICE (707) 445-7833 FAX (707) 445-7877



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: MARY CESARIO WEAVER
Mailing Address: P.O. BOX 1395
City: MENAOCINO, CA Zip Code: 95460 Phone: (707) 961-0937

SECTION II. Decision Being Appealed

- 1. Name of local/port government:
MENAOCINO COUNTY
- 2. Brief description of development being appealed: CDP #64-2005
CONVERT AN EXISTING STORAGE SHED INTO AN AUXILIARY KITCHEN.
SHED IS ON AP# 119-236-10
TENTS ARE ON 119-236-12 + 10
PERMIT SHOWS BOTH PARCEL NUMBERS.
- 3. Development's location (street address, assessor's parcel no., cross street, etc.):
IN THE COASTAL ZONE, IN THE TOWN OF MENAOCINO (HISTORIC ZONE A)
ON THE NORTH SIDE OF ALBION ST. @ 45020 ALBION ST.
AP # 119-236-10 + 12

4. Description of decision being appealed (check one.):

- Approval; no special conditions
- Approval with special conditions:
- Denial

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CALIFORNIA
COASTAL COMMISSION

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-1-MEN-06-023

DATE FILED: 4/13/06

DISTRICT: North Coast

EXHIBIT NO. 3
APPLICATION NO.
A-1-MEN-06-023
MacCALLUM HOUSE
APPEAL (1 of 19)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator
 City Council/Board of Supervisors
 Planning Commission
 Other

6. Date of local government's decision: 3.23.06

7. Local government's file number (if any): CDP # 64-2005

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

MAC CALLUM HOUSE
NOAH SHEPPARD + JED AYRES
BOX 206
MENDOCINO, CA 95460

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

- (1) SUSAN SMITH BOX 457 MENDOCINO, CA 95460
KATHLEEN CAMERON BOX 438 MENDOCINO, CA 95460
WANDA TRABER BOX 813 MENDOCINO, CA 95460
(2) KATHLEEN DONOVAN BOX 393 MENDOCINO, CA 95460
JADE PIER BOX 915 MENDOCINO, CA 95460
LESLIE WAHLQUIST BOX 789 MENDOCINO, CA 95460
IAN MAYENO BOX 813 MENDOCINO, CA 95460

(3)

(4)

2919

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SEE ATTACHED PAPERS & EXHIBITS.

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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Mary L. Dean

Signature of Appellant(s) or Authorized Agent

Date: 4/10/06

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby
authorize

_____ to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____

4419

Mary Cesario Weaver P.O. Box 1395 Mendocino, CA 95460
(707) 961-0937

Appeal of Coastal Permit Decision of Local Government CDP#64-2005

This is the second time I have appealed this decision by the Coastal Permit Administrator, Ray Hall. Please refer to CDP #2-04 and the staff report written by Ruby Pap for the earlier appeal #A-1-MEN-05-032.

In that report, Ms. Pap states among other things, **“the Commission finds that the local government did not have a high degree of factual or legal support for its decision to exempt the outdoor events at MacCallum House as temporary events.”**

When the MacCallum House realized that the CCC staff report of the previous application was not in their favor, they instructed the County to rescind its Notice of Final Action.

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APR 13 2006
CALIFORNIA
COASTAL COMMISSION

When they re-applied a couple of months later for a similar CDP, they excluded mention of the outdoor wedding events or tents from the application for what they now call an “auxiliary” rather than a “catering” kitchen.

When CCC staff received a copy of this new request, Ruby Pap and Bob Merrill wrote a two page letter of their concerns about this application to Ray Hall and Woody Hudson. I enclose a copy of that letter as Exhibit A. **It states quite clearly my reasons for this current appeal.**

As further evidence that this kitchen is to be used for the outdoor wedding receptions and other events, I have enclosed the April 3, 2006 Mendocino Historical Review Board agenda where the MacCallum House kicked off their 2006 event season with the request for **36 days of tents** at the MacCallum House and stated when asked at the MHRB meeting if there would be more tents added later on, that there would indeed be more requests. Exhibit B.

Rick Miller, a coastal planner in the County’s Fort Bragg office has told me that if the MacCallum House cannot have this outdoor kitchen, their intent is to bring in a “temporary portable kitchen,” which I feel is one more way to circumvent the codes even further and add to the continuing

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misrepresentation of the true definition of what a "temporary use" is or what "limited duration" means.

In addition, I submit Exhibit C, a quote from a letter submitted to the CCC from the MacCallum House owners in August of 2005 where they state why they need this outdoor kitchen. "Having the ability to prepare refreshments for these events on site, without having to cart them from another location, **or even from within the MacCallum House restaurant**, will enhance enjoyment of these facilities by guests and community members alike."

And finally, to submit additional evidence as to the frequency of these "temporary events" I submit Exhibit D, the Draft Report for the Mill Site Market Study Update/Land Use Program prepared for the neighboring city of Fort Bragg, California, Section XII. Quasi-Public Community Space where Economic & Planning Services states in their feasibility study of having a reception hall for weddings on the old mill site:

"The MacCallum House in Mendocino has found a niche in weddings, with approximately 25 percent of its business coming from this market segment."

In other words, the "temporary use" of a second kitchen and a "temporary tent" for "temporary outdoor events" brings in 25 percent of their business!

This kitchen is clearly proposed to serve the outdoor events.

It is located in an area appealable to the CCC because pursuant to Section 30603 (a) (4) of the Coastal Act, **the proposed development is not specifically identified as the principal permitted use in the County's zoning code** and because the approved development is located in the Town of Mendocino, a special community as designated in the certified LCP and therefore an appealable sensitive coastal resource area pursuant to Section 30603 (a) (3) of the Coastal Act.

Mary C. Wear

ENC. - 2 PHOTOGRAPHS
REVIEW BOARD MINUTES
EXHIBITS A, B, C, D

6 of 19

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE MAILING ADDRESS
710 E STREET • SUITE 200 P. O. BOX 4908
EUREKA, CA 95501-1885 EUREKA, CA 95502-4908
VOICE (707) 445-7833
FACSIMILE (707) 445-7877



RECEIVED

October 31, 2005

NOV 02 2005

PLANNING & BUILDING SERVICES
FORT BRAGG CA

~~WAGNER~~

EXHIBIT A

Charles Hudson
Mendocino County Planning and Building Services
790 South Franklin St.
Fort Bragg, CA 95437

Re: CDP 64-05 (MacCallum House LLC)

Dear Woody,

Coastal Commission staff has received notice of the above referenced coastal development permit application for the auxiliary kitchen at the MacCallum House in Mendocino. Staff evaluated this proposed kitchen, as well as the County's action exempting the placement of tents for weekend outdoor weddings because they were deemed temporary events, on an appeal of CDP 2-04 (Appeal No. A-1-MEN-05-032). The County rescinded its "notice of final action" for CDP 2-04, and it was our understanding that this was done in order to facilitate the applicants' desire to modify their proposed project to include additional plans that weren't originally included in the initial proposal. Therefore, we have some concerns about the current coastal development permit application (64-05), namely the exclusion of the outdoor wedding events from the application proposal.

~~WAGNER~~

Commission staff believes the outdoor events at MacCallum House should be subject to coastal permitting requirements because they are (1) set up to be permanently served by the proposed auxiliary kitchen; (2) primarily for private weddings and serve an on-going commercial enterprise; and (3) exceed the Town Code's definition of "limited duration" because the outdoor weddings exceed a consecutive four-month period on an intermittent basis, the outdoor events. These points are elaborated below.

Temporary events are defined in the town code as being of "limited duration." "Limited duration" is defined as a period of time that does not exceed a two-week period on a continual basis, or does not exceed a consecutive four-month period on an intermittent basis. It appears that the proposed conversion of the outdoor storage shed to an auxiliary catering kitchen facility is largely intended to serve the outdoor wedding events and other community events at MacCallum House. This fact suggests that the use of the lawn to place tents and hold outdoor temporary wedding gatherings is intended to accommodate intermittent events occurring indefinitely into the future.

The applicants provided Commission staff information on the types and numbers of events that are held on the MacCallum House lawn, in an August 23, 2005 letter. The Inn holds private wedding events for its guests and community events for various entities in

7919

Charles Hudson
10/31/2005
Page 2

Mendocino, including fundraisers, Easter egg hunts, and music festivals. Since 2003, at least 50% (annually) of the events have been private guest events, and this percentage has gone up to 66% (in 2004) and to date in 2005 has been 50% although this percentage will rise because of several booked weddings in the fall (based on personal communication with the applicants, private events will comprise about 61% of the events at MacCallum house for the year 2005). While in 2003 MacCallum House held only six events, this number rose sharply in 2004 with fifteen events (10 of which were weddings or 'private guest events') and in 2005 this number is expected to be eighteen (11 of which are weddings or 'private guest events'). Further, according to personal communication with the applicants, MacCallum House books wedding events several months in advance to fill the popular wedding season in Mendocino, which take place in the spring and early summer and the fall.

As shown above, the previous pattern of weddings and other events and the schedule of future events at MacCallum House do not reflect a random series of unanticipated temporary events. Instead, the weddings occur on a regular basis and provide a significant amount of business to the MacCallum House that is both anticipated and planned for. Therefore, to ensure that all the activities at MacCallum House are evaluated for consistency with the LCP, staff recommends that County determine that these outdoor wedding events are subject to coastal permitting requirements and appropriately evaluate these activities along with the auxiliary kitchen (which is clearly proposed to serve these outdoor events) for consistency with all applicable LCP policies, including, but not limited to, its effects on community character and visual resources. We also note that the project is located in an area appealable to the Commission because the pursuant to Section 30603(a)(4) of the Coastal Act, the proposed development is not specifically identified as the principal permitted use in the County's zoning code; and (2) because the approved development is located in the Town of Mendocino, a special community as designated in the certified LCP and therefore an appealable sensitive coastal resource area pursuant to Section 30603(a)(3) of the Coastal Act.

Thank you for considering our concerns. If you would like to discuss these matters, please don't hesitate to contact me at (415) 904-5260.

Sincerely,


ROBERT S. MERRILL FOR
Ruby Pap
Coastal Planner

Cc: Raymond Hall
Jed Ayres and Noah Sheppard
Mary Cesario Weaver

8 of 19

EXHIBIT

Mendocino Historical Review Board

c/o Planning & Building Services
790 S. Franklin St.
Fort Bragg, CA 95437
964-5379



NOTICE OF PUBLIC HEARING

MONDAY APRIL 3, 2006

The Board will convene at 4:00 p.m. to conduct a site inspection at: 10700 Ford Street (2006-6 MUSD).

The site view will begin near the greenhouse next to the MCN building.

Following the site inspection and presentation, the Board will recess and reconvene at 7:00 p.m. at the Mendocino Community Center at School & Pine Streets, Mendocino, California.

APPLICATIONS & STAFF REPORTS MAY BE REVIEWED AT THE MENDOCINO COMMUNITY CENTER

ORDER OF AGENDA

- | | |
|--------------------------|--------------------------------|
| I. Call to order | VI. Public Expression* |
| II. Roll Call | VII. Determination of Noticing |
| III. Approval of Minutes | VIII. Public Hearing Items** |
| IV. Correspondence | IX. Matters from the Board |
| V. Report from the Chair | X. Matters from Staff |

*PUBLIC EXPRESSION: The Board welcomes participation in the Board meetings. Comments shall be limited so that everyone may be heard. Items of public expression are limited to matters under the jurisdiction of the Board which are not on the posted agenda, and items which have not already been considered by the Board. The Board limits testimony on matters not on the agenda to 3 minutes per person and not more than 10 minutes for a proposed item on a subsequent agenda.

**PUBLIC HEARING ITEMS:

- A. 2006-6 Mendocino Unified School District/ Dickenson (continued and revised locations provided): On the Mendocino High School campus, install a pole mounted solar panel array. All dimensions per submitted plans. Located at 10700 Ford Street (APN 119-170-04) & 45220 Covelo Street (APNs: 119-140-27, 119-160-06, -36, 119-160-41).
- B. 2006-10 Roberto/Rosenthal Construction: Construct a six square foot addition to the east side of the residence. Proposed addition would have a wood door and a hot water heater vent. Add a roof over the western side door. All materials and details per application. Located at 45301 Albion Street (APN: 119-217-02).
- C. 2006-12 Cone/Courtney: Change sign copy. Proposed double-sided wood sign to be painted white with black lettering. Sign would be 24" x 22". Sign to hang from existing wood post, arm and bolts. Paint post and arm white. No change in the proposed sign location. Located at 45066 Ukiah Street (APN: 119-233-09).
- D. 2006-11 Sheppard/MacCallum House: Erect a 60'x 40' tent on the main lawn of the MacCallum House grounds on the following dates in 2006: April 8, May 13, 20, June 3, 17, 24, September 9, 23, 30, October 8, 14, November 5. Tents will be erected on Fridays and taken down on Sundays. Located at 45020 Albion Street (APN: 119-236-12).

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36 DAYS 9919

MacCALLUM HOUSE INN & RESTAURANT

F9b

G R E Y W H A I F B A R & C A F E

RECEIVED

August 8, 2005

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105-2219

AUG 9 8 2005

CALIFORNIA
COASTAL COMMISSION

RE: Appeal No. A-1-MEN-05-032 (MacCallum House, Mendocino)
REQUEST FOR "NO SUBSTANTIAL ISSUE" FINDING

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48

Dear Commissioners:

On Friday, August 12, your Commission will consider whether Appeal No. A-1-MEN-05-032 (MacCallum House) raises a substantial issue. We, the undersigned MacCallum House owners and applicants, respectfully request that you hold a hearing and determine that the appeal raises "No Substantial Issue" of conformance with the certified Mendocino Town Local Coastal Program.

The historic MacCallum House and grounds are enjoyed not only by visitors from all over the world, but also by the very special Mendocino community that three generations of the Ayres and Madden families, and four generations of Sheppards, call home. As Mendocino natives, we are honored to continue a long tradition of outdoor civic events, with the ongoing review and approval of the Mendocino Historical Review Board, as required by the certified Local Coastal Program.

The Mendocino County permit before you on appeal allows us to use just under 70 square feet of an existing storage shed for food preparation in conjunction with these functions, that include a long list of charitable and cultural events, in addition to the weddings referenced in the staff report. Commission files contain over 250 letters from Mendocino residents, supporting both the minor conversion and continued availability of the grounds for these outdoor events, that were not included in the staff report.

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It is important for the Commission to understand that:

- The appeal before you is limited only to a minor change in use. The County permit addresses and approves *only* a change in use. Thus, no other "development" is before the Commission on appeal.
- Temporary Event Tents are not before the Commission as part of this appeal. The County expressly deleted them from County review and approval for CDP 2-04, (Mendocino County Staff Report, Page 4, attached as Exhibit 4 to the Commission Staff Report), and are not before the Commission on appeal.
- "Civic Uses" are a permitted use in the "Commercial" zone (Town Plan, Town Zoning Code Sections 20.620.005 and 20.664.010[2]). The outdoor events hosted at MacCallum House are permitted civic uses, and would raise no LCP use issues if they were before the Commission.
- The outdoor events are "Temporary" (Town Zoning Code Sections 20.708.010[A], 20.708.015, 20.708.020, 20.760.045, and 20.760.050), as determined by the County and the Mendocino Historical Review Board, and would raise no LCP consistency issues if they were before the Commission.
- "Food Preparation" is an allowed accessory use for "Civic Uses" (Town Zoning Code Sections 20.704.010[a] and 20.704.020). Converting <70 square feet of an existing 350 square foot storage shed to allow food preparation for permitted civic uses raises no LCP issues. (Because the shed does not contain,



10219

EXHIBIT C

MacCALLUM HOUSE INN & RESTAURANT

F9b

GREY WHALE BAR & CAFE

and has no room for, a toilet or other restroom facilities, it is also consistent with Town Zoning Code Section 20.704.010[b].)

The Mendocino Town Plan and Zoning Code certified by the Coastal Commission contain numerous constraints to protect the unique character of our community, while also affording the public the opportunity to enjoy our historic and natural resources. The Mendocino Historical Review Board is charged with assuring that all uses, including temporary ones, comply with the Town standards.

Special events using temporary tents, as allowed in the certified LCP, are a part of the history of Mendocino, dating back to the early 20th Century, and possibly before. Today they provide an opportunity for community events that Mendocino simply has no permanent buildings of sufficient size to accommodate.

Although the primary use of the grounds is not part of the permit pending before you on appeal, a few details might assist in understanding how a small outdoor food preparation area within an existing storage shed in the "Commercial" zone will serve the intent of the LCP-approved land use and zoning.

During our ownership, temporary tents have been permitted by the MHRB and erected for these gatherings on 18 occasions (3 in 2003, 11 in 2004, and 4 so far in 2005), for a total of 33 days over a three-year period. Community groups also have access to the temporary tents erected for wedding receptions (also a permitted civic use), and the MHRB has occasionally allowed the tent to remain in place for 2-3 days to facilitate such events.

X

Having the ability to prepare refreshments for these events on site, without having to cart them from another location, or even from within the MacCallum House restaurant, will enhance enjoyment of these facilities by guests and community members alike. Among the community groups that benefit from MacCallum House outdoor events are: (partial list)

- Anderson Valley Music Program
- Cancer Resource Center
- Kelley House - Mendocino Historical Research, Inc.
- Mendocino Coast Clinic
- Mendocino Humane Society
- Mendocino Music Festival
- M.U.S.E
- Mendocino Easter Egg Hunt

Because our County-approved conversion of storage space for food preparation is an allowed accessory use to LCP-permitted civic uses that benefit Mendocino residents and the public, and is consistent with all other applicable LCP policies, as demonstrated above, we ask you to find that the County permit approval raises "No Substantial Issue."

Thank you for your consideration. We will be present on August 12 to provide testimony and answer questions. Issues regarding jurisdiction and other policy questions raised in the Commission staff report will be addressed under separate cover.

Sincerely,

Megan Ayres

Megan Ayres

Jed Ayres

Jed Ayres

Noah Sheppard

Noah Sheppard

CC: Bob Merrill/CCC-Eureka



11919

EXHIBIT D



Economic &
Planning Systems
Real Estate Economics
Regional Economics
Public Finance
Land Use Policy

DRAFT REPORT

MILL SITE MARKET STUDY UPDATE/ LAND USE PROGRAM

Prepared for:

City of Fort Bragg

Prepared by:

Economic & Planning Systems, Inc.

December 2005

EPS #15113

BERKELEY
2501 Ninth St., Suite 200
Berkeley, CA 94710-2515
www.epsys.com

Phone: 510-841-9190
Fax: 510-841-9208



SACRAMENTO
Phone: 916-649-8010
Fax: 916-649-2070

DENVER
Phone: 303-623-3557
Fax: 303-623-9049

12/9/05

XII. QUASI-PUBLIC COMMUNITY SPACE

Quasi-public community space would contribute to the overall value of the Mill Site by providing space for ancillary uses, such as weddings and festivals.

MARKET ASSESSMENT

- * The MacCallum House in Mendocino has found a niche in weddings, with approximately 25 percent of its business coming from this market segment. However, there is minimal reception location in Mendocino to hold weddings of between 100 to 150 guests, sometimes up to 200. As a result, receptions are frequently held under tents during the summer months, making weddings a seasonal business.

THE MAC HOUSE

The Mill Site offers a great opportunity for an events space to hold weddings year-round, both ceremonies and receptions so that guests do not have to be chartered from one location to another. In addition, proximity to the beach and the oceanfront location are draws. Since weddings are events for which people are willing to travel longer distances, the relatively remote location of Fort Bragg would not deter visitors from coming to the Mill Site.

Such a facility could also serve as a cultural center to hold events such as music festivals. The Mendocino Music Festival takes place in a tent that is erected in Mendocino Headlands State Park during the month of July. This festival would possibly relocate to a more permanent facility at the Mill Site.

MHRB November 7, 2005 Draft Minutes Page 4

Chair Dill said that any motion should eliminate references to the use of the building addition by striking reference to the water heater and air intake fan.

M/S St. John/Dill to approve MHRB 05-23 with modifications. Construct a 3' x 4' hot water heater enclosure addition to the east elevation of the auxiliary food storage building (proposed commercial kitchen which has not yet been approved with a coastal permit). Addition to be constructed with V rustic redwood to match existing siding with a redwood access door and blue composition shingle roofing. Install an intake air fan and air vents per application. Add one louvered vent to the east elevation and one to the north elevation. Vents to be metal, painted blue. Subject to the standard findings and conditions.

Motion carried 2-1 (S. John dissenting).

IX. Matters from the Board

Board member Smith asked staff about the recently installed real estate magazine dispensers showing up in town. (Newly installed red ones had been placed in several locations around town and were removed after contacted the owner explaining that a MHRB permit was required before they could be located in the historic district). Board member Smith questioned how long other dispensers had been placed in town and said they also need a permit. He said that Ruby Warner Realty still had two signs up even though the new owners (River Realty) were only approved for one sign at a recent meeting. He also said they have two new real estate magazine dispensers in front of their office which had not previously been there.

MHRB discussed the process for getting the Chevron gas station back on an agenda since it was continue date uncertain at a previous meeting. Staff will look into the process and call the applicant.

X. Matters from Staff

KITCHEN
Coastal Development Permit (CDP) 64-05 MacCallum House LLC (referral for comments).

Chair Dill said he had heard comments from members of the public against the wedding tents.

Board member Smith said that the frequency of tents had gotten out of hand and could change the character of the historic district. He cited increase in traffic, industrial trucks parked for hours on narrow streets as comments had heard from members of the public who were against the tents.

14/19

Board member St. John said that he had also seen support for the tents from members of the public. He reviewed the members of the signed petitions submitted in support of the tents and the past testimony made before the **MHRB** in support of the tents.

Chair Dill said the frequency of the events, traffic from cars and people were issues.

* Noah **Sheppard** said the kitchen could be used separately from the wedding events for other purposes.

Board member St. John said he did not think any comment should be made on the referral to the **MHRB**.

Board member Smith said that their individual comments had just been made and would be made part of the minutes but agreed that no formal or unified response from **MHRB** was necessary.

M/S *Smith/St. John moved to adjourn at 9:10 p.m.*

TENTS DISCUSSED AT MHRB WHEN MRS HOUSE ASKED FOR KITCHEN - CLEARLY SHOWS INTENT IS TO USE KITCHEN FOR THESE EVENTS -

Motion carried 3-0.

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MENDOCINO HISTORICAL REVIEW BOARD

DRAFT MINUTES - REGULAR MEETING

November 7, 2005

These are action minutes. For a complete transcript of the meeting please request a copy of the tapes. Cassette tapes of this meeting are available at the Fort Bragg Planning & Building Department upon request. There is a fee of \$10.00 per tape.

Draft minutes will be approved, possibly with corrections, at the next MHRB meeting.

I. Call to Order @ 7:00 p.m.

II. Roll Call

Board members St. John, Dill & Smith were present. Members Hauck & Daly were absent
Secretary Miller present.

III. Approval of Minutes

M/S Smith/St. John to approve the draft October 3, 2005 minutes as written (no corrections).

Motion carried, 3-0.

IV. Correspondence

None.

V. Report from the Chair

No report.

VI. Public Expression:

None.

VII. Determination of Noticing

Miller stated that all items were properly noticed.

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VIII. Public Hearing Items

No one was present for Item A **MHRB 05-52**, so the Chairman (with consensus from the rest of the Board members) moved the item to the end of the agenda.

- A. **05-53 Roberts/Pell:** 1). Change proposed wood siding on garage from previously approved 1 x rustic siding to 1 x 10 channel rustic siding per application. 2). Replace window on east side of garage door, porch roof and exterior light per application. 3). Construct a 12-foot wide dormer on the elevation of the garage with windows per application. Located at 45121 Little Lake Street (APN 05).

Margaret Calby stated her support for the project.

M/S St. John/Dill to approve MHRB 05-53 as written. Subject to the standard findings and conditions.

Motion carried 3-0.

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- B. 05-54Kettner/Newberger:** Install one skylight on the east facing roof slope and install two skylights on the west facing roof slope. All dimensions, locations and details per application. Located at 451 North Street (APN 119-237-05).

Deborah Kettner showed a picture dating from 1905-1908 showing the skylight on the east facing roof slope. She also presented photo evidence of the inside roof framing on the west facing slope which appeared to show there were also two skylights on the west facing roof slope historically on the subject building.

Board member St. John said that the Board does not normally approve aluminum-clad windows such as proposed in the application request.

Board member Smith asked about the status of the watertower that was taken down with a permit two years ago.

Miller said that the permit approval required the tower to be reconstructed to match the original tower by November 1, 2005. He said that the applicant recently submitted the building permit but would obviously not be able to finish the project by the required date.

Deborah Kettner explained that she has every intention to rebuild the tower as required but needed more time to complete the project.

The Review Board members expressed their opinion that there was no need to re-approve the water tower because she had already submitted the building permit before the expiration date of the MHRB approval. They wanted to see the project move forward without delay.

Board member St. John discussed possible methods to shield the aluminum cladding and the reflective glass skylight from public view.

Chair Dill said that skylights also allow light to shine upwards into the night sky. He felt the big problem with the requested skylights was the light that would escape from the openings. He stated that this opinion had been expressed on other occasions in less prominent locations. He said that he did believe from the presentation that the building did historically have skylights but he said that this was a Category I historic building. He said that he did not support aluminum-clad skylights and that the skylights looked modern.

Board member Smith agreed that the potential up lighting of the night sky was a problem.

The recently restored "Red House" was mentioned as a historic building with a skylight (approved by the Board on 4/5/2006).
<http://72.14.203.104/search?q=cache:2uUL7W9NfpYJ:www.co.mendocino.ca.us/planning/...> 4/5/2006

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Chair Dill said he believed **MHRB** had made a mistake in approving the skylight on the Red House because skylight did not look historic but rather modern.

After the discussion and public hearing, the applicant requested a continuance to next month to allow time to research more historic looking skylights.

Board member St. John made a motion to continue the project to next month. No second was made and the motion failed for lack of a second.

M/S Smith/Dill to deny MHRB 05-54.

Discussion:

Board member St. John said that was not a friendly motion. He questioned why the **MHRB** would not allow the applicant to have the requested continuance for a month as has previously been an option for applicants whose project did not have enough support.

Board member Smith said he did not want to approve skylights on a Category I historic building.

Wendy Roberts said that the subject building clearly had skylights. She could not imagine that the Review Board would deny historic skylights.

Miller read the motion prior to the vote to assure that the **MHRB** understood the motion was to deny the request.

Motion carried 2-1 (St. John dissenting).

C. 05-52 MacCallum House, LLC: Construct a 3' x 4' hot water heater enclosure to the east elevation of the auxiliary food storage building (proposed commercial kitchen which has not yet been approved for a coastal permit). Addition to be constructed with V rustic redwood to match existing siding with a door and access door and black composition shingle roofing. Install an intake air fan and air vents per approved plans. Located at 45020 Albion Street (APN119-236-10, 12).

Noah **Sheppard** explained that confusion from previous approvals on the subject structure led him to believe this addition was already authorized and said he had already done the work. The discrepancy in the floor plans was made apparent when the coastal development permit application was submitted and it showed the addition for the first time.

Miller briefly explained that there is no record that the **MHRB** had previously approved the requested addition.

Noah **Sheppard** asked that all the references to the use of the structure be removed from the request because they were irrelevant to the matter before the **MHRB**.

Wendy Traber asked about the relationship between this request and the coastal permit needed to authorize the commercial kitchen. Miller briefly explained the process and relationship.

Wendy Roberts said that this was not about the use of the structure but rather a simple request for a 3 x 4' addition.

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STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 64-2005
March 23, 2006
CPA-1

OWNER: **RECEIVED**
MAR 21 2006
MacCallum House LLC
P. O. Box 206
Mendocino, CA 95460

APPLICANT: CALIFORNIA
COASTAL COMMISSION
Noah Sheppard & Jed Ayres
P. O. Box 206
Mendocino, CA 95460

REQUEST: Convert an existing storage shed containing a walk-in refrigerator into an auxiliary kitchen by adding a commercial gas stove & vent hood, double s/s sink, hand washing sink, water heater, floor drain, and ventilation fans. Also add a 3 ft. by 4 ft. water heater enclosure.

LOCATION: In the coastal zone, in the Town of Mendocino (Historic Zone A); on the north side of Albion St. (CR# 407D) and the south side of Ukiah St. (CR# 407C), approximately 250 feet west of their intersections with Lansing St. (CR# 500), at 45020 Albion St., AP# 119-236-10 & 12.

APPEALABLE AREA: Yes (Special Community)

PERMIT TYPE: Standard

TOTAL ACREAGE: 0.7± acre

GENERAL PLAN: C (Commercial)

ZONING: MC * (Mendocino Commercial with visitor-serving facilities combining district)

EXISTING USES: MacCallum House Inn and Restaurant

SUPERVISORIAL DISTRICT: 5

ENVIRONMENTAL DETERMINATION: Categorically Exempt – Class 3(e)

EXHIBIT NO. 4
APPLICATION NO. A-1-MEN-06-023 MacCALLUM HOUSE NOTICE OF FINAL LOCAL ACTION (1 of 10)

OTHER RELATED APPLICATIONS: Numerous permit applications have been submitted in conjunction with the MacCallum House property. The permits listed below are those related to the present coastal development application, CDP 64-2005.

MHRB Permit No. 03-2006, submitted 2/11/03, approved 4/7/03, issued 4/18/03, for (in part) enclosing the two open sides of a storage shed with redwood siding to match existing.

Building Permit No. 2003-0669, submitted 7/1/03, revised 8/21/03, issued 8/28/03, not finalized, for enclosing an existing storage area. The initial application showed a kitchen, and was not approved

STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 64-2005
March 23, 2006
CPA-2

because it would have been a change in use. The application was revised to show only dry storage and a refrigerator.

CDP 2-2004, MacCallum House, was submitted on 1/23/04, and approved by the CPA on 6/23/05 for the conversion of an existing shed to a catering kitchen. The application included a request to allow the use of a 40 ft. by 60 ft. tent in conjunction with weddings and other events. The CPA determined that the tent was not subject to coastal permit approval, and approved the kitchen. The County's approval of the application was appealed to the Coastal Commission, and the Commission found that the appeal raised a substantial issue and scheduled a *de novo* hearing. Prior to the hearing, the applicants withdrew their application from the County, and no hearing was held by the Coastal Commission.

MHRB Permit No. 2004-09, submitted 3/15/04, approved 5/3/04, issued 5/14/04, for new exterior siding, new doors, and a wall-mounted vent fan for the catering kitchen. At the hearing it was determined that the roof on the remodeled building was too high and was required to be lowered.

Building Permit No. 2004-0138, submitted 2/12/04, issued 2/12/04, not finalized, for adding an electrical sub-panel in an existing storage building.

MHRB Permit No. 04-28, submitted 6/22/04, approved 7/12/04, and issued 7/22/04, for a ventilation fan for a commercial range in the catering kitchen. The fan is to be recessed into a copper-lined well in the roof.

MHRB Permit No. 04-46, submitted 9/22/04, approved 10/4/04, and issued 10/15/04, allowing the copper enclosure of the fan approved by MHRB 04-28 to be changed to unfinished redwood siding.

A violation fee was collected for CDP 2-2004 on 11/4/04 after it was determined that the kitchen had been partially installed and was in use.

PROJECT DESCRIPTION: The applicants wish to establish an accessory kitchen in a detached structure for use in conjunction with the operation of the MacCallum House Inn and Restaurant in Mendocino. To that end the applicants have obtained permits from the Mendocino Historical Review Board and have obtained building permits (listed above) to combine and enclose two existing sheds to create a 337 square foot storage building. Permits have also been obtained for new exterior siding, new doors, vent fans, a walk-in refrigerator, and electrical service, with the condition that the use of the building be limited to storage, and that no use as a kitchen occur without approval of a coastal development permit for the proposed change of use. Coastal Development Permit Application CDP 2-2004, was submitted requesting that the kitchen be allowed, and also requesting the periodic use of a 40 foot by 60 foot tent in conjunction with weddings and other events hosted by the MacCallum House. When staff became aware that a kitchen was being operated in the storage building prior to approval of the permit, a violation fee was assessed. CDP 2-2004 was subsequently approved by the Coastal Permit Administrator, without provision for the tent, which was determined not to need a coastal development permit. The County's approval was appealed to the Coastal Commission, where the appeal was found to raise substantial issues, and a *de novo* hearing by the Commission was scheduled. Because the appeal, and the Coastal Commission's finding of substantial issues both were partly based on the request for the tent, the applicants withdrew CDP 2-2004 and the County rescinded its approval, and no *de novo* hearing was held by the Commission. Now the applicants have submitted the current application, CDP 64-2005, requesting only the conversion of the storage building to an accessory kitchen, with no request for use of tents.

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STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 64-2005
March 23, 2006
CPA-3

The application provides the following project description:

Install the following food handling equipment in a previously permitted accessory structure:

- Double stainless steel sink w/drainboards and floor sink (drain).
- Hand washing sink.
- Hot water heater w/exterior redwood enclosure.
- Air intake fan.
- Commercial gas stoves w/fan hood.
- Ceiling fan w/copper-lined exterior redwood shroud.

The approximately 340 sq. ft. redwood shed that is proposed to be converted for the MacCallum House Inn and Restaurant's accessory kitchen use has an offset gable composition roof, 60-amp sub panel, and a walk-in refrigerator, and is located on the Ukiah Street side of the property, to the rear of the MacCallum House kitchen.

LOCAL COASTAL PROGRAM CONSISTENCY RECOMMENDATION: The proposed project is consistent with the applicable goals and policies of the Local Coastal Program as described below.

Land Use: The property is the site of the MacCallum House Inn and Restaurant, a hotel, restaurant and bar recognized in the Town Plan (Table 4.13-1) and the Town Zoning Code (Section 20.684.025) as an existing 21 unit visitor-serving facility. Existing development on the site (AP# 119-236-10) includes the MacCallum House (a three-story, 5,000 square foot, Category I historic building), six cottages, a pump shed, a water tank, the storage shed that is the subject of this application, extensive landscaping, and off-street parking. A separate adjacent parcel under the same ownership (AP# 119-236-12) contains a large lawn area, a barn, two sheds, and more landscaping.

The parcel is classified on the Town of Mendocino Land Use Map as Commercial, and is zoned Mendocino Commercial with the Mendocino Visitor-Serving Facilities Combining District also applied (MC*). The proposed accessory kitchen would be an allowed accessory use within an allowed accessory structure, as provided by Chapter 20.704 of the Mendocino Town Code (Accessory Use Regulations). The change of use of the building from storage to a kitchen falls within the definition of development as defined in Section 20.608.023 (C) and requires approval of coastal development permit (Section 20.704.010 (B)).

Section 20.608.023 (C) of the Mendocino Town Zoning Code defines development to include "...change in the density or intensity of use of land..." and "...alteration of the size of any structure...". Therefore the combination of the two storage sheds into one, the proposed addition of a 12 square foot water heater enclosure, and the change in use from storage to a kitchen would constitute development as they include both an alteration of the size of a structure and a change in intensity of use.

In the coastal zone and within the Town of Mendocino, certain types of development are exempt from the need to obtain a coastal development permit. Development that may be exempt within the Town of Mendocino is described in Section 20.720.020 of the Town Code, and includes:

Improvements to any structure other than a single family residence or a public works facility, except as otherwise specified in [Chapter 6] Subchapter 7.5, Title 14, California Code of Regulations and any amendments thereafter.

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STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 64-2005
March 23, 2006
CPA-4

The combination and enclosure of the sheds for continued use as a storage building were determined to meet the qualifications for exemption, however any improvement to a structure which changes the intensity of use of the structure is specifically excluded from being exempt. Therefore approval of a coastal development permit is required to change the use of the storage shed to a kitchen. The addition of the 12 square foot water heater enclosure could have been exempt except that its intended use is integral with the change in use of the storage building to a kitchen. Therefore it also is subject to approval of a coastal development permit.

Use is defined in Section 20.608.040 of the Mendocino Town Code as:

the purpose for which land or a building is occupied, arranged, designed or intended or which land or a building is or may be occupied or maintained.

Accessory uses and structures are defined in Section 20.608.020 of the Town Code, and are regulated by Chapter 20.704.

Accessory building and accessory structure are both defined as:

...a detached subordinate structure, the use of which is incidental to the established primary use or main structure located on the same lot or building site; i.e., private garage, storage shed, farm out buildings, etc. In no case shall such accessory structure dominate, in purpose, the principal lawful structure or use. This definition, by itself, is not intended to prohibit an accessory structure which is greater in size than the main structure. Accessory buildings shall not contain any sleeping quarters or kitchen facilities and are therefore not intended for human occupancy except as provided in Chapter 20.704.

Accessory use is defined as:

...use of land or of a structure incidental or subordinate to the principal use located upon the same lot.

The definitions of accessory building and accessory use employ the terms primary use and principal use. Section 20.608.035 defines both principal use and principal permitted use, and distinguishes between them.

Principal permitted use is defined as:

...the primary use as designated in the Mendocino Town Plan and this Division for each land use classification. Use Types allowed within each principal permitted use category are specified in Chapters 20.644 through 20.684.

Principal use is defined as;

...the primary use(s) for which land or a building is or may be intended, occupied, maintained, arranged or designed.

The difference is that principal permitted uses are limited to those uses listed in the regulations for each zoning district, while principal uses may be any one or more uses that are, or may be, the dominant use of a building or parcel, and may be conforming or nonconforming uses.

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STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 64-2005
March 23, 2006
CPA-5

Therefore the shed is an accessory structure because it is a detached subordinate structure, incidental to the MacCallum House, which is the main structure on the site. The use of the shed for storage is an accessory use because it is incidental to the use of the MacCallum House as a hotel and restaurant. Also the proposed use of the shed as a kitchen will be an accessory use because it will be subordinate to the principal use (the inn and restaurant) located on the same lot.

The Code does not define primary use, but it can be inferred from the definition of principal use that it is the main use or uses of a building or land, either existing or proposed, not limited to the principal permitted uses listed for any particular zoning district.

The last sentence of the definition of accessory use states:

Accessory buildings shall not contain any sleeping quarters or kitchen facilities and are therefore not intended for human occupancy except as provided in Chapter 20.704.

(The exception provided in Chapter 20.704 (Accessory Use Regulations) allows an accessory living unit, which in the Town Code is the same as a guest cottage, and which may have sleeping quarters, but may not have a kitchen.)

In order to protect coastal resources, maximize public access to the coast, and assure priority for coastal-dependent development, as required by the Coastal Act, Mendocino County's Local Coastal Program imposes numerous controls on the development of residences. In most areas of the coastal zone, second residential units are prohibited. Guest cottages and detached bedrooms are allowed but may not have kitchens, to prevent them from becoming additional dwelling units. Full bathrooms are restricted in accessory structures such as workshops and garages lest they become dwelling units. Temporary living units such as family care units and employee housing units require administrative permit approval, and must be renewed periodically, or removed if the need no longer continues. In general the regulations in effect in the coastal zone are designed to provide a high degree of control over the development of land for residential use within the coastal zone.

Whether or not a structure is, or has the potential to be used as a residence is generally determined by whether or not the structure has a kitchen, or an area designed to facilitate its use as a kitchen. Generally, two kitchens are not allowed in a single structure, to preclude the possibility that the structure might become a duplex, having two separate living units where only one is allowed. Nevertheless, both the County and the Coastal Commission have approved applications that did include a second kitchen, where it was clearly designed as a use that was accessory to the primary use, and did not present a concern that it might become an additional dwelling unit. CDP 74-2004, Reynen, approved by the Coastal Permit Administrator on October 27, 2005, allowed construction of an accessory building containing an outdoor barbeque kitchen. The application was appealed to the Coastal Commission where the appeal was found to raise no substantial issue (A-1-MEN-05-057). CDP 46-2002, Bauccio, approved by the Coastal Permit Administrator on July 25, 2002, also allowed an accessory building with an outdoor kitchen. No appeal was filed with the Coastal Commission. The feature of each of these applications that allowed them to be approved was that the accessory kitchen was clearly designed to be accessory to the principal use on the site (a single family residence in both cases), and did not appear to offer potential for conversion to an unauthorized dwelling unit.

The same principle applies to the proposed kitchen at the MacCallum House. The kitchen is clearly intended to be a use that is secondary to the principal uses being conducted on the site, and offers no

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STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 64-2005
March 23, 2006
CPA-6

potential for conversion to some other unauthorized use, such as an additional visitor unit, or an additional living unit. Although the last sentence of the definition of accessory building states that an accessory building shall not contain any sleeping quarters or kitchen facilities, when read in its entirety, it is apparent that the intent of the sentence is to make it clear that accessory buildings cannot be used as living units except as provided in Chapter 20.704 (which allows guest cottages). As proposed, the accessory kitchen would not lend itself to conversion to a living unit, and its approval would be consistent with other approvals granted for accessory kitchens where there was no likelihood of conversion to some other use.

Chapter 20.704 establishes "*the relation among the principal and accessory uses and the criteria for regulating accessory uses*". Section 20.704.020 specifies accessory uses allowed in conjunction with civic and commercial types, as follows:

(B) Accessory structures and uses necessarily and customarily associated with, and appropriate, incidental, and subordinate to the principal civic or commercial uses shall be permitted where these use types are permitted.

It has been established that the existing 337 square foot, 12 foot high shed is properly considered to be a structure that is accessory to the 5000 square foot, three story MacCallum House. The shed is clearly incidental and subordinate to the principal structure on the site. It is similar to other small accessory structures found throughout Mendocino, such as wood sheds, pump houses, detached garages, and various other types of necessary, customary and appropriate storage buildings. The proposed use of the shed as a kitchen is also properly considered as an accessory use. It will certainly be incidental and subordinate to the primary uses on the site, the inn, and restaurant, and kitchens are clearly necessary, customary and appropriate in conjunction with a restaurants. The fact that the additional proposed kitchen area is in a separate detached building does not make it any less appropriate than if it were being proposed as an attached addition to the existing kitchen in the MacCallum House. In fact it is unlikely that an addition to the MacCallum House could be approved because it would be a modification of a Category I historic building.

Section 20.704.020 (B) states that accessory structures and uses shall be permitted wherever principal commercial use types are permitted. The principal commercial use types being operated on the site are the inn, bar, and restaurant. Although they are not listed as principal permitted uses in the Mendocino Commercial Zoning District, they are legal commercial uses and they are permitted as defined by the Code. Section 20.608.035 (E) defines permit as: "*...any license, certificate, approval, or other entitlement for use granted by any public agency.*" The MacCallum House Inn and Restaurant holds entitlements from a number of public agencies including the Division of Environmental Health, the Treasurer/Tax Collector, the Alcoholic Beverage Commission, the Mendocino City Community Services District, and the Mendocino Historical Review Board. The MacCallum House is therefore a commercial use type, (an eating and drinking establishment, and an inn), and is permitted, in that it holds entitlements for use granted by various public agencies. An existing principal use need not be a principal permitted use in order to have an accessory use.

No setbacks are required from property lines in the MC zone. The catering kitchen will be installed within an existing structure, and will not affect any existing setbacks. The proposed development complies with setback requirements.

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**STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT**

**CDP# 64-2005
March 23, 2006
CPA-7**

The maximum building height allowed in an MC zone is two stories, and at no point on the parcel more than 28 feet. The drawings submitted with the application show the building to be in compliance, having a maximum height of 12 feet.

Section 20.648.050 of the Mendocino Town Zoning Code limits lot coverage to a maximum of 25%. Lot coverage includes structures, decks, porches and walkways, but does not include uncovered required parking areas, landscaping, patios and terracing. Assessor's Parcel 119-236-10 is approximately 24,568 square feet in size. The allowable lot coverage, at 25%, is 6,142 square feet. Existing lot coverage on the parcel is approximately 9,200 square feet, substantially over the allowable limit. Although the proposed water heater enclosure adds 12 square feet to the existing building, it does not add additional lot coverage because it replaces existing decking, resulting in no net increase in lot coverage.

Growth Management: Policy 4.13-1 of the Mendocino Town Plan states that the controlling goal of the Plan is the preservation of the town's character, which shall be achieved by maintaining a balance between residential units, visitor accommodations, and commercial uses. On the Land Use Map for the Town, the MacCallum House parcel is classified as Commercial, and the MacCallum House is listed in the Plan as one of the Town's visitor-serving facilities. The project will not add any new visitor units to the site and will not alter the balance between residential, visitor, and commercial uses in the Town.

Visual Resources: The exteriors of the remodeled sheds have not changed appreciably. Visual resource issues were addressed by the MHRB as discussed above, and found to be in compliance with the requirements of both the Historical Preservation District design standards, and the Local Coastal Plan.

Public Access: The project site is located west of Highway 1, but east of Heezer Drive, designated as the first public road paralleling the shoreline. Consequently the project will have no impact on public access to the shoreline.

Hazards: The project site is within a State Responsibility Area administered by the California Department of Forestry and Fire Protection, and has a moderate fire hazard severity rating as determined by CDF. CDF does not require review of projects on parcels smaller than one acre for compliance with CDF fire safe standards. There are no other apparent hazards associated with the site.

Natural Resources: The project site has been previously developed. No impact to natural resources is anticipated.

Archaeological/Cultural Resources: The project site is not close to streams or the ocean, and is not an area where archaeological and/or cultural resources are deemed likely to be found. Standard Condition Number 8 is recommended, advising the applicant of the requirements of the County's Archaeological Ordinance (Chapter 22.12 of the Mendocino County Code) in the event that archaeological or cultural materials are unearthed during site preparation or construction activities.

Groundwater Resources: The Coastal Ground Water Study prepared in 1982 by the Department of Water Resources shows the parcel to be in an area designated as "Critical Water Resources". The project is within the Mendocino City Community Services District. Water is provided by an on-site well, while sewer service will be provided by the District. When the MCCSD reviewed CDP 2-2004, the District found the application to be consistent with MCCSD requirements. In response to the current application, MCCSD submitted the following comments:

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**STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT**

**CDP# 64-2005
March 23, 2006
CPA-8**

The MCCSD has determined that the project described in the CDP #64-2005 staff report, to convert an existing shed to an auxiliary kitchen was an expansion of the existing restaurant kitchen facility. The District does not consider the proposed project as New Development, Change of Use, or an Expansion of Existing Use, as defined in the District's Groundwater Extraction Permit Ordinance No. 04-1, since there was no change in water use. According to the Water Use Standards contained in the Groundwater Extraction Permit Ordinance No. 04-1, the use of an outside auxiliary kitchen would not increase the applicant's existing groundwater extraction allotment established for the current and present use.

The MacCallum House Inn/Restaurant has established a Groundwater Allotment and Sewer Right of Use with the MCCSD, and has met all MCCSD permit requirements for the conversion of the existing shed to an auxiliary kitchen.

No adverse impact to groundwater resources is anticipated.

Transportation/Circulation: The property is the site of the MacCallum House, a hotel, restaurant and bar, which has an established history of hosting weddings and other outdoor gatherings. Weddings and similar events are a permitted accessory use as provided by Chapter 20.704 of the Mendocino Town Code. The auxiliary kitchen will facilitate the provision of food service in conjunction with such gatherings, and in itself will not result in any change in traffic to the site, and will have no impact on transportation or circulation. The Mendocino County Department of Transportation reviewed the application and had no comment on the project.

Public Health and Safety: The auxiliary kitchen will be used to provide food service to the public, and consequently is subject to the provisions of the California Uniform Retail Food Facility Law, as administered by the Mendocino County Division of Environmental Health. The previous application, CDU 2-2004, was reviewed by Thomas Worley, REHS, who found the plans to be acceptable, and made the following request of the applicant:

Please contact me at least 2 weeks before you plan to operate, to schedule a preopening inspection. All the equipment must be installed and operating for the preopening inspection. You may want a consultation inspection before the preopening inspection to avoid any delays.

Subsequently, after receipt of reports that the kitchen was being used, Brian Hoy, REHS, inspected the facility, found that use had occurred, and ordered that no food preparation be conducted in the kitchen until all permits have been obtained and the facility has been inspected and found to be in compliance. In response to the referral for CDU 64-2005, the Division of Environmental Health commented that the Division was aware of the proposed conversion and were working with the applicants. Standard Condition Number 4 requires that all required permits from other agencies having jurisdiction be obtained.

Zoning Requirements: The project complies with the zoning requirements for the Mendocino Commercial (MC) District set forth in Chapter 20.664, and with all other zoning requirements of Division III of Title 20 of the Mendocino County Code.

PROJECT FINDINGS AND CONDITIONS: Pursuant to the provisions of Chapter 20.720 of the Mendocino County Code, staff recommends that the Coastal Permit Administrator approve the proposed project, and adopt the following findings and conditions.

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STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 64-2005
March 23, 2006
CPA-9

FINDINGS:

1. The proposed development is in conformity with the certified local coastal program; and
2. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and
3. The proposed development is consistent with the purpose and intent of the zoning district applicable to the property, as well as all other provisions of Division III of the Mendocino County Code, and preserves the integrity of the zoning district; and
4. The proposed development, if constructed in compliance with the conditions of approval, will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act; and
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource; and
6. Other public services, including but not limited to, solid waste, public roadway capacity, and proof of an adequate water supply pursuant to Chapter 20.744 have been considered and are adequate to serve the proposed development; and
7. The proposed development is in conformance with the design standards of Section 20.760.050.

STANDARD CONDITIONS:

1. This action shall become final on the 11th day following the decision unless an appeal is filed pursuant to Chapter 20.728 of the Mendocino Town Zoning Code. The permit shall become effective after the ten working day appeal period to the Coastal Commission has expired and no appeal has been filed with the Coastal Commission. The permit shall expire and become null and void at the expiration of two years after the effective date except where construction and use of the property in reliance on such permit has been initiated prior to its expiration.

To remain valid, progress towards completion of the project must be continuous. The applicant has sole responsibility for renewing this application before the expiration date. The County will not provide a notice prior to the expiration date.
2. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Division III of Title 20 of the Mendocino County Code.
3. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and that compliance therewith is mandatory, unless an amendment has been approved by the Coastal Permit Administrator.
4. This permit is subject to the securing of all necessary permits for the proposed development from County, State and Federal agencies having jurisdiction.

9910

STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 64-2005
March 23, 2006
CPA-10

5. The applicant shall secure all required building permits for the proposed project as required by the Building Inspection Division of the Department of Planning and Building Services.
6. This permit shall be subject to revocation or modification upon a finding of any one or more of the following:
 - a. The permit was obtained or extended by fraud.
 - b. One or more of the conditions upon which the permit was granted have been violated.
 - c. The use for which the permit was granted is conducted so as to be detrimental to the public health, welfare or safety, or to be a nuisance.
 - d. A final judgment of a court of competent jurisdiction has declared one or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more such conditions.
7. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.
8. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.

SPECIAL CONDITIONS: None

Staff Report Prepared By:

March 14, 2006
Date

Charles N. Hudson
Charles N. Hudson
Senior Planner

Attachments: Exhibit A- Location Map
Exhibit B- Site Plan
Exhibit C- Floor Plans
Exhibit D- Elevations

10 of 10



maryinmendo@hotmail.com

Printed: Monday, April 24, 2006 6:24 PM

From : Charles (Woody) Hudson <hudsonc@co.mendocino.ca.us>
Sent : Friday, March 24, 2006 4:50 PM
To : <maryinmendo@hotmail.com>
Subject : RE: CDP 64-05 MacCallum House staff report

MIME-Version: 1.0

Received: from zaphod.mendocino.gov ([67.121.249.25]) by bay0-mc10-f18.bay0.hotmail.com with Microsoft SMTPSVC (6.0.3790.1830); Fri, 24 Mar 2006 16:50:55 -0800

Received: from gwia.mendocino.gov (gwmta.mendocino.gov [172.16.45.30]) by zaphod.mendocino.gov (8.13.4/8.13.4/Debian-3) with ESMTTP id k2P0op2g027769for <maryinmendo@hotmail.com>; Fri, 24 Mar 2006 16:50:52 -0800

Received: from COMDOM1-MTA by gwia.mendocino.gov with Novell_GroupWise; Fri, 24 Mar 2006 16:50:52 -0800

X-Message-Info: JGTyoYF78jFhhLiae/MZ251dXZa/XuaJ1+KjUVmRSU=

X-Mailer: Novell GroupWise Internet Agent 6.5.4

X-Spam-Score: undef - HOST Whitelisted (Host 172.16.45.30 is whitelisted)

X-CanIt-Stats-ID: 1934915 - 27aa74b2a44b

X-CanItPRO-Stream: default

X-Scanned-By: CanIt (www.roaringpenguin.com) on 172.16.10.225

Return-Path: hudsonc@co.mendocino.ca.us

X-OriginalArrivalTime: 25 Mar 2006 00:50:55.0926 (UTC) FILETIME=[2CABCD60:01C64FA6]

Mary,

I concede it would have been prudent of me to have had a notice of the hearing sent to you, even though we had no specific request from you for notice of the current application. I was certainly aware of your opposition to, and appeal of, the prior application for the kitchen. I guess with the distractions of trying to wrap up as many projects as possible before becoming retired at the end of the day today, it just didn't occur to me. When you didn't show up at the hearing, I supposed that you were no longer opposed to the project since it no longer included a request for the use of tents, which seemed to be the main focus of your previous appeal.

In looking over the regulations for appeals to the Coastal Commission, I don't see any requirement that the appellant has to have attended the local hearing. (See Section 20.728.020 in the Mendocino Town Zoning Code, available at <http://www.co.mendocino.ca.us/planning/MendoZO/ZOMendoIndex.htm>, and also Section 13111 of the Coastal Commission Regulations).

Also you have the option of appealing the decision of the Coastal Permit Administrator to the Board of Supervisors (see Section 20.728.015), and then could appeal the Board's decision to the Coastal Commission.

Charles N. Hudson, Senior Planner
 County of Mendocino Planning and Building Services
 790 South Franklin Street
 Fort Bragg, CA 95437
 707-964-5379 phone
 707-961-2427 fax

>>> "Mary Cesario/Weaver" <maryinmendo@hotmail.com> 3/24/2006 3:50 PM >>>

Why was I not notified about this hearing? I would think since I appealed this to the CC that you and Ray Hall and Rick Miller all would have had big red flags on your files to let me know when they reapplied for this permit because you all knew I was going to appeal it again to the Coastal Commission. Thank you. Mary

Mary Cesario Weaver
 P.O. Box 1395

[http://by112fd.bay112.hotmail.msn.com/cgi-bin/getmsg?curmbox=00000000%](http://by112fd.bay112.hotmail.msn.com/cgi-bin/getmsg?curmbox=00000000%00)

EXHIBIT NO. 5
APPLICATION NO.
A-1-MEN-06-023 MacCALLUM HOUSE
APPELLANT'S CORRESPONDENCE WITH COUNTY